

ESTTA Tracking number: **ESTTA492574**

Filing date: **09/04/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                        |   |
|------------------------|---|
| Proceeding             | 92054980  |
| Party                  | Defendant<br>Paisanos Pasta, LLC  |
| Correspondence Address | ANDREW D. FORTNEY<br>THE LAW OFFICES OF ANDREW D. FORTNEY PH.D., P.C.<br>1725 N. FINE AVE.SUITE 101<br>FRESNO, CA 93727<br>UNITED STATES<br>andrew.fortney@fortneylaw.com, bradley.levang@fortneylaw.com,<br>records@fortneylaw.com |
| Submission             | Opposition/Response to Motion   |
| Filer's Name           | Bradley J. Levang   |
| Filer's e-mail         | bradley.levang@fortneylaw.com   |
| Signature              | /Bradley J. Levang/   |
| Date                   | 09/04/2012  |
| Attachments            | Declaration of BJL in Support of Opposition to Mtn to Extend Disc Period<br>20120904.pdf ( 10 pages )(340166 bytes )  |

**In the matter of U.S. Trademark Registration No. 3,553,382**

1. I am an attorney at the law firm of The Law Offices of Andrew D. Fortney, Ph.D., P.C., and am one of the attorneys representing Paisanos Pasta, LLC (“Registrant”) in this action brought by Petitioner Andoni, Inc. (“Petitioner”).
2. I am over the age of twenty-one, and am competent to make this Declaration.

3. The facts set forth in this Declaration are based on my personal knowledge.
4. On March 8, 2012, the discovery period in the above-captioned cancellation proceeding opened. See docket no. 1.
5. On June 29, 2012, Registrant served Petitioner with a first set of Interrogatories and a Request for Production of Documents (collectively "Discovery Requests").
6. On July 31, 2012, Wally Kubitz, Petitioner's counsel, contacted me seeking an extension of time to provide responses to the Discovery Requests. We agreed that Petitioner would have until August 10, 2012 to provide responses to the Discovery Requests.
7. The deadline to disclose experts was on August 5, 2012. The deadline to disclose experts was on August 5, 2012. See docket no. 1. Neither Petitioner nor Registrant have disclosed any experts, or have served any expert disclosures on the other party.
8. On August 9, 2012 Mr. Kubitz again contacted me seeking a further extension of time to provide responses to the Discovery Requests.
9. On August 10, 2012, we agreed that Petitioner would have until August 24, 2012 to provide responses to the Discovery Requests.
10. On August 24, 2012, Mr. Kubitz contacted me via telephone and represented that Petitioner did not have responses to the Discovery Requests.
11. During our discussions regarding the above-referenced requests for extension of time, Mr. Kubitz offered Registrant an equal amount of time in which to respond to the discovery propounded by Petitioner.
12. Registrant's responses to Petitioner's discovery requests (served on July 13, 2012) are presently due on September 10, 2012.

13. On August 10, 2012, Mr. Kubitz and I discussed the issue of settlement. That same day, Registrant proposed a settlement offer to Petitioner.

14. Not until August 22, 2012, did Petitioner send a counter offer in the form of a first proposed Settlement Agreement to me.

15. Almost every day since then, Mr. Kubitz and I have been exchanging offers and counter-offers.

16. While Registrant agrees with Petitioner that the parties have been working toward settlement and they appear to be getting closer, a final settlement agreement has yet to be reached.

17. On August 31, 2012, Mr. Kubitz and I were still trying to get to our respective clients to agree to some of the more significant points of settlement.

18. As of September 4, 2012, the parties seem hopeful about finalizing a settlement, but settlement is still not certain or guaranteed.

19. On September 4, 2012, the discovery period in this case closes.


20. On September 4, 2012, Petitioner filed its Motion for Extension of Discovery and Testimony Periods.

21. I raised the issue of the tardy responses to the Discovery Requests with Mr. Kubitz by telephone on August 24, 2012.

22. I have sent Mr. Kubitz e-mails on August 28, 29, and 30, 2012 regarding the outstanding discovery responses. Attached hereto as Exhibit A are true and correct copies of the e-mails I sent Mr. Kubitz, dated August 28, 29, and 30, 2012, except with the portions discussing settlement redacted.

23. On August 29, 2012, I sent an e-mail to Mr. Kubitz indicating that Registrant would file a motion to compel if responses to the Discovery Requests were not received by August 31, 2012. See Exhibit A.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: September 4, 2012 By: 

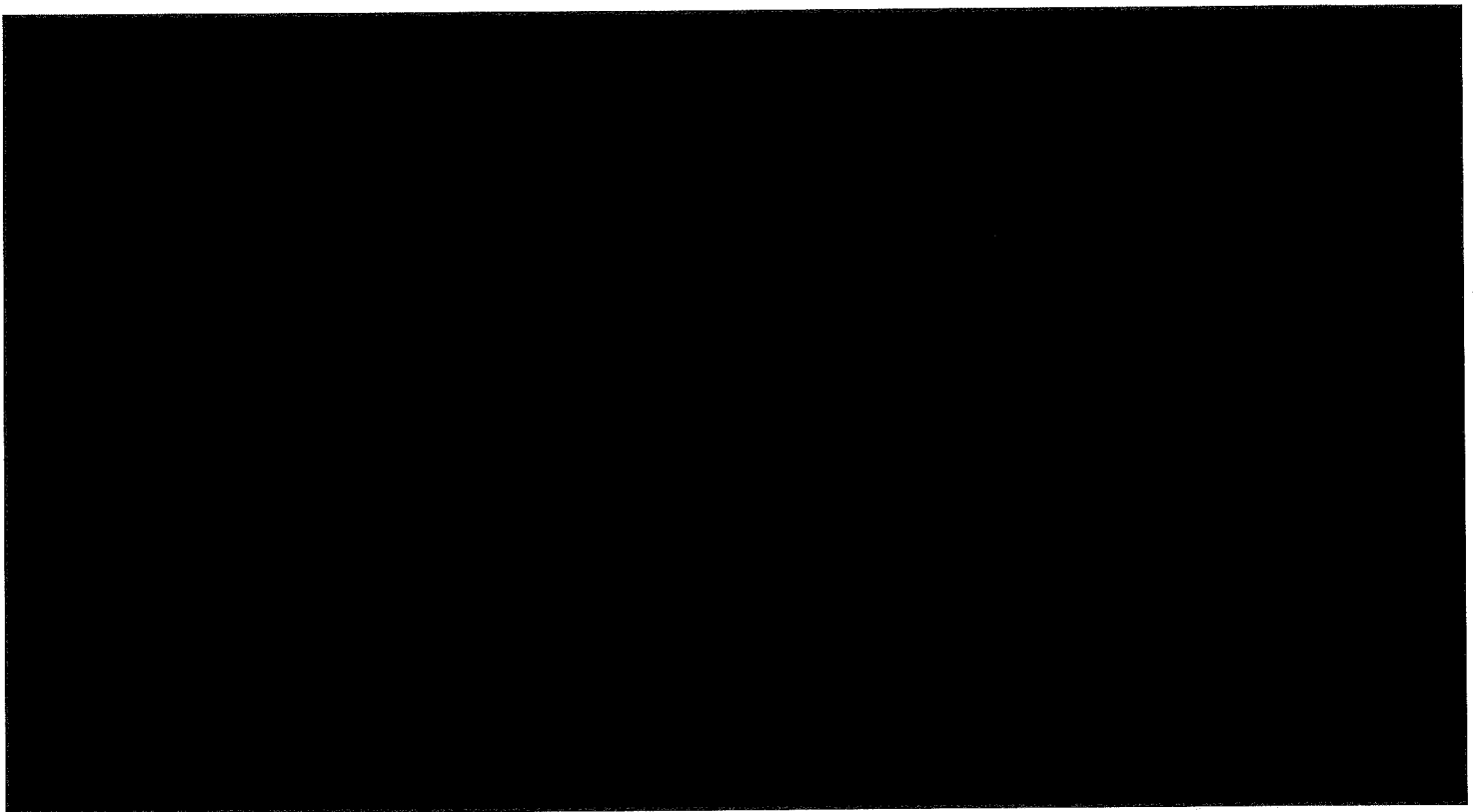
# **EXHIBIT A**

**Bradley Levang**

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**From:** Bradley Levang  
**Sent:** Tuesday, August 28, 2012 10:28 AM  
**To:** 'Wally Kubitz'  
**Subject:** RE: Andoni, Inc. v. Paisanos Pasta, LLC

Dear Mr. Kubitz:



As of Friday, August 24, 2012, and after a month's worth of extensions, Andoni failed to provide timely responses to the First Set of Interrogatories and Requests for Production. Your explanation on Friday was that Andoni simply did not have the responses, and you did not state that any would be forthcoming. Based on the foregoing, I take your statement to be an express representation that Andoni will **NOT** be providing discovery responses. Please let me know by the close of business today if I am mistaken in this regard.

Sincerely,  
Brad

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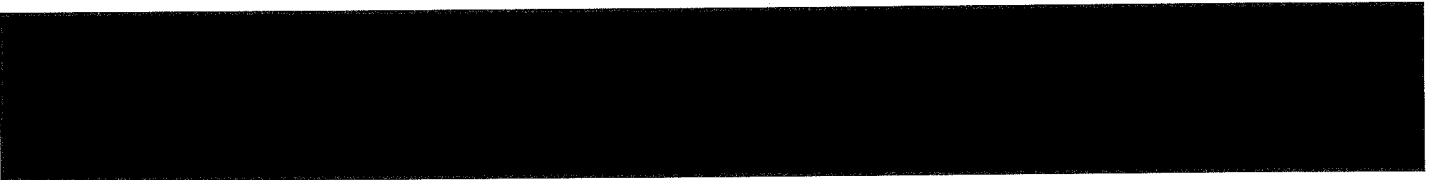
**From:** Wally Kubitz [mailto:wkubitz@litmanlaw.com]  
**Sent:** Monday, August 27, 2012 1:02 PM  
**To:** Bradley Levang  
**Cc:** litman law out  
**Subject:** Andoni, Inc. v. Paisanos Pasta, LLC

August 27, 2012

Bradley J. Levang, by e-mail to [Bradley.levang@fortnevlaw.com](mailto:Bradley.levang@fortnevlaw.com)

Re: Andoni, Inc. v. Paisanos Pasta, LLC  
Cancellation No. 92,054,980 before the Trademark Trial and Appeal Board  
seeking cancellation of U.S. Trademark Registration No. 3,553,382 for the mark "PAISANOS PASTA (& design)"

Dear Mr. Levang:



Walter Kubitz

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Walter Kubitz - Attorney at Law  
Litman Law - Manassas, Virginia U.S.A.  
Near the U.S. Patent & Trademark Office  
Toll-free: 1-800-4-PATENT (1-800-472-8368)  
Local & Outside U.S. & Canada: 703-486-1000  
[HTTP://WWW.LITMANLAW.COM](http://WWW.LITMANLAW.COM)

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**Bradley Levang**

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**From:** Bradley Levang  
**Sent:** Wednesday, August 29, 2012 12:17 PM  
**To:** 'Wally Kubitz'  
**Subject:** Andoni, Inc. v. Paisanos Pasta, LLC

Dear Mr. Kubitz,

Andoni has not provided any responses to the First Set of Interrogatories and Requests for Production, which were due on August 24, 2012. As you know, the discovery window in this proceeding closes on September 4, and Monday, September 3 is a Federal holiday. Further, your statements during our telephone conference last Friday were an express representation that Andoni does not intend to provide discovery responses.

As such, we have little choice but to file a motion to compel and/or for sanctions sooner rather than later. In an effort to give Andoni every possible chance at production, please advise us by Thursday, August 30, 2012 whether your client will produce any responses to the outstanding discovery by 5:30 (EST) on Friday, August 31, 2012.

Brad

## Bradley Levang

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**From:** Bradley Levang  
**Sent:** Thursday, August 30, 2012 10:54 AM  
**To:** 'Wally Kubitz'  
**Subject:** RE: Settlement

Dear Mr. Kubitz:

[REDACTED]

As for the past due discovery, your client has now had a couple months to provide responses and has failed to do so. We await responses by your close of business on Friday. Will your client produce responses by then? It is extremely unlikely that our client will consent to any extension of time from the TTAB.

Brad

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**From:** Wally Kubitz [<mailto:wkubitz@litmanlaw.com>]  
**Sent:** Thursday, August 30, 2012 9:07 AM  
**To:** Bradley Levang  
**Cc:** litman law out  
**Subject:** FW: Settlement

August 30, 2012

Dear Mr. Levang:

I am sorry about the discovery. We will try to get something to you if we can't settle. Obviously we would have to get some extension from the TTAB as well.

[REDACTED]

Walter Kubitz

**CERTIFICATE OF SERVICE**

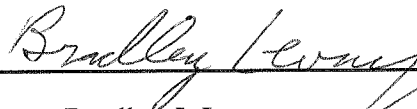
The undersigned certifies that based on agreement by the parties to accept service by electronic transmission, a copy of **Declaration of Bradley J. Levang in Support of Paisanos Pasta, LLC's Opposition to Petitioner's First Motion for Extension of Discovery and Testimony Periods** was served on Andoni, Inc. on September 4, 2012, by being sent via electronic mail, as well as the original being sent by first class mail with postage prepaid, and addressed to Andoni, Inc.'s attorney of record as follows:

Richard C. Litman  
Walter E. Kubitz  
Litman Law Offices, Ltd.  
8955 Center Street  
Manassas, VA 20110

E-mail: efile@4patent.com and wkubitz@litmanlaw.com

Dated: September 4, 2012

By: \_\_\_\_\_

  
Bradley J. Levang